

# FIFTH COURT OF APPEALS

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**05-19-00280-CR**

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FILED IN  
5th COURT OF APPEALS  
DALLAS, TEXAS

04/11/2019 3:32:32 AM

LISA MATZ  
Clerk

*Ex parte Christopher Rion*

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On Appeal from Crim. Dist. Ct. No. 5 Dallas County  
WX18-90101

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## **Motion to Abate the Appeal for Additional Time for the Trial Court to File the Requested Findings of Fact and Conclusions of Law**

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**To the Honorable Justices of the Court of Appeals:**

Appellant Rion files this Motion to Abate the Appeal for Additional Time for the Trial Court to File the Requested Findings of Fact and Conclusions of Law:

1. The case below is styled *State v. Rion*, No. WX18-90101 (Crim. Dist. Ct. No. 5).

2. This is an appeal of the denial of a pretrial application for writ of habeas corpus from double jeopardy filed by Appellant.

3. In *State v. Rion*, No. F15-71618 (Crim. Dist. Ct. No. 5), Appellant was tried and found **not guilty** by a jury for Manslaughter.

4. Appellant had also been indicted for Aggravated Assault with a Deadly Weapon in *State v. Rion*, No. F15-72104 (Crim. Dist. Ct. No. 5). The facts underlying the alleged Aggravated Assault with a Deadly Weapon are the same as for the Manslaughter (same car accident, same circumstances, but merely different complainants).

5. Despite Appellant's pleas to the trial court and the State to allow Appellant to be tried at the same time for both cases, the trial court refused. Ultimately, the jury found Appellant **not** guilty of Manslaughter. The alleged Aggravated Assault with a Deadly Weapon remained.

6. Rather than drop the case, the State decided that it wanted a second shot at Appellant on the Aggravated Assault with a Deadly Weapon. Because of this,

Appellant filed the application for writ of habeas corpus, alleging double jeopardy under collateral estoppel.

7. On February 1, 2019, without a hearing, the trial court entered a one-sentence order denying Appellant's application. (CR.706).

8. The notice of appeal was timely filed on **March 1, 2019**. (CR.709-710).

9. The clerk's record was filed on March 20, 2019.

10. The Appellant's Brief is due on **April 12, 2019**.

11. On **March 8, 2019**, Appellant filed a timely request for findings of fact and conclusions of law ("FFCL") (CR.711). Appellant believes that FFCL in this case are necessary so that he and this Court can know the trial court's reasoning behind denying the application and because of the standard of review of such cases.

12. A trial court's decision granting or denying relief requested in an application for writ of habeas corpus is reviewed under an abuse of discretion standard. *Kniatt v. State*, 206 S.W.3d 657, 664 (Tex.Crim.App. 2006); *see also Ex parte Cummins*, 169 S.W.3d 752, 755 (Tex.App.-Fort Worth 2005) (same). This court is required to review the record evidence in the light most favorable to the trial court's ruling. *Kniatt*, 206 S.W.3d at 664.

13. Great deference must be given to the trial court's findings and conclusions. *Ex parte Wheeler*, 203 S.W.3d 317, 324 (Tex.Crim.App. 2006); *Ex parte Lewis*, 219 S.W.3d 335, 371 (Tex.Crim.App. 2007) (same). But to know

whether deference can be given, obviously one must know the reasoning behind the trial court's ruling. This case involves a lot of law but also facts adduced from the prior trial that is made part of the record.

14. Which facts did the trial court depend on to deny Appellant's application? What law did the trial court depend on?

15. Appellant must know what facts and law the trial court depended upon to reach its conclusion that as a matter of law, Appellant was **not** entitled to relief under the collateral estoppel option of double jeopardy. This is so despite the determination of legal standards being reviewed de novo. *Ex parte Peterson*, 117 S.W.3d 804, 819 (Tex.Crim.App. 2003), *overruled in part on other grounds by Ex parte Lewis*, 219 S.W.3d 335, 371 (Tex.Crim.App. 2007).

16. **Nobody** will be prejudiced by a short abatement. Appellant remains on bond pending trial on the Aggravated Assault case, *State v. Rion*, No. F15-72104 (Crim. Dist. Ct. No. 5). The trial court granted a continuance in No. F15-72104 pending the outcome of this Appeal. And, the State simply wants a second shot at Appellant but has never demanded that this second shot occur quickly.

17. Thus, there is no urgency for this appeal to be resolved quickly (i.e., nobody is in jail, the trial court is not anxious to try the case, and the state does **not** appear anxious to try the case).

18. Finally, and although **not** directly related to this issue, Appellant's trial

counsel Kirk Lechtenberger continues to negotiate with the State to try to resolve the issues and avoid a second trial and this appeal. The parties appear close, and Mr. Lechtenberger is awaiting an answer from the trial prosecutors. So while Attorney for Appellant Mowla works on getting the FFCL entered by the trial court, a short 30-day abatement will also allow Mr. Lechtenberger and the state trial prosecutors to perhaps resolve the issues in the trial court. Should that happen, Attorney for Appellant will notify this Court and file a motion to dismiss this appeal with Appellant's approval.

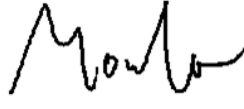
19. This Motion is **not** filed for purposes of delay, but so that justice may be served.

### **Prayer**

Appellant prays that this Court grant this Motion to Abate the Appeal for Additional Time for the Trial Court to File the Requested Findings of Fact and Conclusions of Law and allow up to 30 days for Attorney for Appellant to work on getting the FFCL entered, and in the meantime, the parties may resolve the issues below and prevent an appeal from going forward at all.

Respectfully submitted,

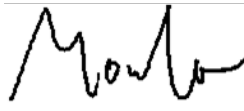
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### Certificate of Service

I certify that on April 11, 2019, a copy of this document was served on the Dallas County District Attorney's Office, Appellate Division, 133 N. Riverfront Boulevard, Dallas, Texas 75207 by Texas efile to [brian.higginbotham@dallascounty.org](mailto:brian.higginbotham@dallascounty.org) and [DCDAAppeals@dallascounty.org](mailto:DCDAAppeals@dallascounty.org).



/s/ Michael Mowla  
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